



**STATE OF NEW HAMPSHIRE
POLICY AND PROCEDURE ON TRANSGENDER
EMPLOYMENT
Department of Administrative Services
Division of Personnel**

September 15, 2016

I. Statement of Intent

The State of New Hampshire does not discriminate in any way on the basis of age, sex, race, color, marital status, familial status, physical or mental disability, religion or national origin, sexual orientation, gender identity, and/or gender expression. This policy is designed to create a safe and productive workplace environment for all employees. This policy will:

1. Address the needs and rights of transgender and gender non-conforming employees and their families;
2. Clarify how the law should be implemented in situations where questions may arise about how to protect the legal rights or safety of such employees; and
3. Provide guidance on how to ensure the safety, comfort, and healthy development of transgender or gender non-conforming employees while maximizing the employee's workplace integration and minimizing stigmatization of the employee.

II. Definitions

The following definitions are intended to provide State employees with the terminology necessary to understand this policy.

1. “Gender identity” means a person’s internal, deeply-felt sense of being male, female, or something other or in-between, regardless of the sex they were assigned at birth. Everyone has a gender identity.
2. “Gender expression” means an individual’s characteristics and behaviors (such as appearance, dress, mannerisms, speech patterns, and social interactions) that may be perceived as masculine or feminine.
3. “Transgender” means an umbrella term that can be used to describe people whose gender identity and/or expression is different from their sex assigned at birth.
 - a. A person whose sex assigned at birth was female but who identifies as male is a transgender man (also known as female-to-male transgender person, or FTM).
 - b. A person whose sex assigned at birth was male but who identifies as female is a transgender woman (also known as male-to-female transgender person, or MTF).
 - c. Some people described by this definition don’t consider themselves transgender – they may use other words, or may identify simply as a man or woman. A person does not need to identify as transgender in order for an employer’s nondiscrimination policies to apply to them.
4. “Gender non-conforming” describes people who have, or are perceived to have, gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Keep in mind that these expectations can vary across cultures and have changed over time.
5. “Transition” means the process of changing one’s gender from the sex assigned at birth to one’s gender identity. There are many different ways to transition. For some people, it is a complex process that takes place over a long period of time, while for others it is a one- or two-step process that happens more quickly. Transition may include “coming out” (telling family, friends, and coworkers), changing the name and/or sex on legal documents, or accessing medical treatment such as hormones and surgery.

III. Policy for State Workforce

Privacy

Transgender employees have the right to discuss their gender identity or expression openly, or to keep that information private. The transgender employee gets to decide when, with whom, and how much to share their private information. Information about an employee's transgender status (such as the sex they were assigned at birth) can constitute confidential medical information under privacy laws such as the Health Insurance Portability and Accountability Act (HIPAA). At no time should any member of management or any co-worker require a transgender employee to provide medical information, such as use of hormone therapy or surgeries. Management, human resources ("HR") staff, or coworkers should not disclose information that may reveal an employee's transgender status or gender non-conforming presentation to others. That kind of personal or confidential information may only be shared with the transgender employee's consent and with coworkers who truly need to know to do their jobs.

Official Records

The State of New Hampshire will change an employee's official record to reflect a change in name or gender upon request from the employee. Certain types of records, like those relating to payroll and retirement accounts, may require a legal name change before the person's name can be changed. Some records, however, can be changed to reflect a person's preferred name without proof of a legal name change. The process to modify some common documents is attached as Appendix A to this policy.

An employee should request any changes to state records with his/her supervisor or HR director. This includes employee state-issued email addresses and identification cards. As quickly as possible, management and HR staff will make every effort to update any photographs at the transitioning employee's workplace so the transitioning employee's gender identity and expression are represented accurately. If management cannot provide the requested update or change, he or she should explain to the employee why such change is not possible. If a new or transitioning employee has questions about agency records or ID documents, the employee should contact the agency HR director or contact the Division of Personnel at (603) 271-3261.

Names/Pronouns

It is very important for employees to be addressed by the name and pronoun that correspond to the employee's gender identity, upon request. A court-ordered name or gender change is not required. While the State acknowledges that employees may make mistakes from time to time with regard to an employee's preferred name or pronoun, the intentional or persistent refusal to respect an employee's gender identity (for example, intentionally referring to the employee by a name or pronoun that does not correspond to the employee's gender identity) or the use of derogatory terms can constitute harassment and is a violation of this policy. An employee engaging in such conduct may be the subject of discipline, including termination. If you are unsure what pronoun a transitioning coworker might prefer, you can politely ask your coworker how they would like to be addressed. If you mistakenly refer to an employee

by the incorrect name or pronoun, you should apologize and move on.

Transitioning on the Job

Employees who transition on the job can expect the support of management and human resources staff. Agency HR director, in conjunction with the Division of Personnel, will work with each transitioning employee individually to ensure a successful workplace transition on a case-by-case basis. A listing of agency human resources representatives can be found at the following link: <https://das.nh.gov/hr/contacts.html>.

A sample transition plan is attached at the end of this document.

Restroom Accessibility

Employees shall have access to the restroom corresponding to their gender identity. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, will be provided access to a single-stall restroom, when available.

All employees have a right to safe and appropriate restroom facilities, including the right to use a restroom that corresponds to the employee's gender identity, regardless of the employee's sex assigned at birth. That is, transgender women must be permitted to use the women's restroom, and transgender men must be permitted to use the men's restroom. That decision should be left to the transgender employee to determine the most appropriate and safest option for them. Some employees—transgender or cisgender—may desire additional privacy. Where possible, an employer will make available a unisex single-stall restroom that can be used by any employee who has a need for increased privacy, regardless of the underlying reason.

Locker Room Accessibility

All employees have the right to use the locker room that corresponds to their gender identity. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, can be provided with a reasonable alternative changing area such as the use of a private area, or using the locker room that corresponds to their gender identity before or after other employees). Any alternative arrangement for a transgender employee will be provided in a way that allows the employee to keep their transgender status confidential.

Dress Codes

The State of New Hampshire generally does not have dress codes that restrict employees' clothing or appearance on the basis of gender. State agencies or entities that do have gender-based dress codes will work with the Department of Personnel to review and modify those policies consistent with this policy, as necessary.

Discrimination/Harassment

It is unlawful and violates State policy to discriminate in any way (including, but not limited to, failure to hire, failure to promote, or unlawful termination) against an employee because of the employee's actual or perceived gender identity or gender expression. Additionally, it is unlawful and contrary to this policy to retaliate against any person objecting to, or supporting enforcement of legal protections against, gender identity or expression discrimination in employment.

The State of New Hampshire is committed to creating a safe work environment for transgender and gender non-conforming employees. Any incident of discrimination, harassment, or violence based on gender identity or expression will be given immediate and effective attention, including, but not limited to, investigating the incident, taking suitable corrective action, including discipline, and providing employees and staff with appropriate resources and training.

Health Benefits

Executive Order 2016-04 issued by Governor Margaret Wood Hassan on June 30, 2016, prohibits state agencies from discriminating on the basis of gender identity or gender expression. In keeping with Executive Order 2016-04, the State of New Hampshire has authorized our third party administrator (TPA) to accept requests from our health benefit plan members for medically necessary transgender health services, including but not limited to hormone therapy, individual surgical services related to gender reassignment, as well as therapy and counseling. As with all requests for health care, whether a request is medically necessary will be determined by our TPA's medical staff based on defined criteria and in consultation with the individual requesting the service and his or her medical providers.

Sick and Medical Leave

Employees receiving treatment as part of their transition can use annual and/or sick leave under applicable agency rules. Employees who are qualified under the Family Medical Leave Act may also be entitled to take medical leave for transition-related needs of themselves or their families.

Specific Questions

For further guidance on these issues, contact the New Hampshire Division of Personnel at 603-271-3261.

Resources

NH Employee Assistance Program (EAP), 271-4336, www.dhhs.nh.gov/hr/eap

New Hampshire Commission for Human Rights, <https://www.nh.gov/hrc>

US Equal Employment Opportunity Commission, www.eeoc.gov

Human Rights Campaign - www.hrc.org/workplace/transgender

Parents, Families, and Friends of Lesbians and Gays (PFLAG) National, www.pflag.org

Transgender Law Center, www.transgenderlawcenter.org

Transgender at Work, www.tgender.net/taw

TG-NH (Transgender New Hampshire), www.tg-nh.org

TransLaconia - support group for 18+ LGBTQ individuals, <https://translaconia.org>

Sample Workplace Transition Plan

This Workplace Transition Plan addresses some of the processes that may occur during an employee transition. This plan is a sample that is designed to be revised and modified as necessary. It does not provide a mandatory process. The plan should be customized to fit your agency's staffing structure and work setting, and should be modified on a case-by-case basis with each transitioning employee to meet their individual needs. It is paramount that the employee is comfortable with every step of the plan.

Ideas for Before the Workforce Transition Begins

1. The employee should confidentially speak with their selected first point of contact to make that person aware of the employee's future intentions, needs, and concerns.
2. If the employee's supervisor was not the first point of contact, the employee should make a plan to inform his or her supervisor of his or her intentions, needs, and concerns related to gender identity and expression. If an employee needs assistance in order to make this contact, the employee should contact the HR director
3. With the employee's permission, the supervisor should contact the agency HR office and/or the Division of Personnel. The supervisor and/or HR director should make sure that the employee knows about the state's transgender-related policies and the availability of transition-related health care benefits. The onus should not be on the employee to find these resources. The employee may make this contact directly, if he or she prefers.
4. The employee should consider creating a transition support team and identifying who should be a member of this group. It is important that this team include the employee's immediate supervisor and someone from the agency HR office; however, this is certainly not required if circumstances make it undesirable or impracticable. All members of this transition support team should familiarize themselves with the state's policies and any other relevant resources that provide educational information about transgender issues.
5. The employee, with assistance from the transition support group, should then create the Workplace Transition Plan. Make sure it addresses all of the following areas:
 - a. The date on which employee plans to make his or her transition or intention to transition public within the workplace. This date may coincide with the date that the employee will, for example, change his or her gender expression, name, or pronouns. The employee may choose to begin using the restroom and locker room associated with their gender identity on this date as well. The employee will know best when this should occur as they will be able to determine all relevant factors to be considered when choosing this date. The employee may also choose to make a series of changes over time, rather than all on one specific date.

- b. Decide how, and in what format, the employee's colleagues, clients, and vendors will be made aware of the employee's transition, if at all. It is up to the employee to decide how and when to publicize this information. The employee may decide to inform peers on a person-by-person or small-group basis, rather than make a large-scale announcement.
 - c. Discuss how any potential negative or inappropriate responses will be handled within the workplace.
 - d. Decide what, if any, training will be given to co-workers.
 - e. Determine what updates should be made to the employee's records, and when they will be made.
 - f. Determine dates of any leave that may be needed for pre-scheduled medical procedures.
 - g. Address any other issue or concern identified by the employee.
6. The supervisor and/or HR director must ensure that all name changes and photographs are updated in advance so that they are available on the day(s) identified by the employee. This includes email addresses. Make sure to keep in mind that name changes within certain processes could take longer than in others, and may require working with outside agencies, as well as courts. Figure this into your Transition Plan timeline.
 7. The supervisor and/or HR director should ensure that they provide the employee ample opportunity to consider his or her options and if necessary, modified plans already in place. Supervisors and/or co-workers should not undertake any action not approved or agreed-upon by the transitioning employee.
 8. If an employee would like to recommend additional training be made available to his or her co-workers, the supervisor and/or HR director should contact the New Hampshire Employee Assistance Program and/or the Department of Personnel.

The Day the Transition will be Made Known to the Work Team

1. If the employee has decided to make an informal or formal announcement of his or her transition or intention to transition, follow the transition plan created by the employee and his or her support team.
2. If the employee thinks it would be helpful, the employee's supervisor may provide educational information about transgender issues. The supervisor and/or HR director should take the lead on obtaining these materials from personnel and/or other sources. It is not the transitioning employee's responsibility to educate his or her workplace. All materials and resources must be approved in advance of distribution by the employee.

Regardless of the method used to announce the transition, the employee's supervisor and all other high-level management must show solidarity for the transitioning employee.

- a. Emphasize the transitioning employee's importance to the state agency and management's complete support of the employee's transition.
- b. Review the state's relevant nondiscrimination policies.
- c. Indicate that the employee will be presenting themselves in accordance with their gender identity and this should be respected. The supervisor and/or HR director should also advise co-workers about the transitioning employee's new name and preferred pronoun.
- d. Be a behavioral model by using the transitioning employee's new name and pronoun in all communication—written and oral, formal and informal.
- e. Make a point that the transition will not change the workplace and that everything should go on as it did previously.
- f. Solicit any questions. Refer questions the supervisor cannot answer to the agency HR office or the Division of Personnel.
- g. If training is going to be provided, it should occur prior to the date that the employee begins to implement their transition plan. The supervisor and/or HR director should work with the New Hampshire Employee Assistance Program and the Department of Personnel to plan and schedule such training.

The First Day of the Employee's Official Workplace Transition

The employee's supervisor and HR director should be clear that all elements are in place, in the same way they would for a new hire or transferred employee. These elements include:

1. Making sure that the transitioning employee has a new ID badge and photo, if necessary.
2. Ensuring all work documents have the appropriate name and gender and checking that these have been changed in all of the places an employee's name may appear.

APPENDIX A

OVERVIEW OF SOME DOCUMENTS THAT A STATE EMPLOYEE MAY SEEK TO HAVE CHANGED IN CONNECTION WITH A TRANSGENDER TRANSITION

DOCUMENT	ABILITY TO CHANGE	HOW	OTHER
State Employee ID Card - Name Change - Gender Marker	This can be changed without a legal name change.	When working with your HR director or Supervisor on a transition plan, you can request that you receive a new State Employee ID Card. Your HR director will sign any necessary paperwork for you to do so. You may request and obtain the card prior to when a transition occurs.	Once an employee and HR director have completed a State ID Request Form, the employee can make an appointment with Admin Services for a new ID. The information to schedule the appointment is located at the bottom of the form.
State Government Email Address	This can be changed without a legal name change.	Please contact your HR director for an email address change that reflects your chosen name. Your HR director will contact DoIT with authorization to do so. Your HR director will also make the change of email into NHFIRST for the employee directory.	DoIT is able to assign a new name to each State Employee's email account. Once this occurs, emails the employee sends will only reflect his or her new name to the recipient; however, the original state employee name does remain in the system as a link to the employee's new email address.

Personnel File	Once an employee has begun working in the gender role consistent with the employee's gender identity, the Division of Personnel has a document that can be completed, if desired by the employee, and placed in the employee's file to note the employee's new name and gender. Employee records going forward from that date will reflect the new name.	Every state agency HR director will have the Personnel form to be completed. Please request the form from the HR director and return to him/her.	Note: Federal documents within an employee's state personnel file cannot be changed without the individual having the changes made to the federal documents through federal law requirements.
NH FIRST** - Name in Directory - Medical Cards - Paycheck - W-2 Forms	A name change with the NHFIRST System requires a legal name change document.	A legal name change must occur through NH Circuit Court – Probate Division. <i>See RSA 547-3:i</i>	Please bring the original document of a legal name change to your HR director who will make a copy and work with DAS to make changes in NHFIRST. New medical cards will be issued when changes to NHFIRST occur.

** NHFIRST is the State's Enterprise Resource Planning (ERP) system that supports the Budgeting, Financial, Human Resources, and Payroll functions, including benefit management, for all of New Hampshire State government. NHFIRST is administered by the Department of Administrative Services.

Retirement Accounts	A name change with the New Hampshire Retirement System requires a legal name change document.	A legal name change must occur through NH Circuit Court – Probate Division. <i>See RSA 547-3:i</i>	The NH Retirement System has documentation online related to a legal name change.
NH Driver's License -Name Change -Gender Designation	Saf-C 1011.02 requires a name change petition from a probate court or a court decree to change a transgender individual's name on a motor vehicle license. Saf-C 1011.03 requires a written certification by a licensed and qualified health care provider to change a gender designation on a motor vehicle license.		
Federal Documents - Passport -Social Security Cards	Changes to these types of documents are covered by federal law and require a legal name change and/or medical documentation for a change of gender designation.	A legal name change must occur through NH Circuit Court – Probate Division. <i>See RSA 547-3:i</i>	Note: Federal documents within an employee's state personnel file cannot be changed without the individual having the changes made by the federal government.